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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/837,056	04/18/2001	Roger P. Hoffman	P/2-93	9175

7590
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09/19/2007

EXAMINER

PLUCINSKI, JAMISUE A

ART UNIT	PAPER NUMBER
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3629

MAIL DATE	DELIVERY MODE
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09/19/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/837,056

Applicant(s)

HOFFMAN, ROGER P.

Examiner

Jamisue A. Plucinski

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 14 is/are pending in the application.
- 4a) Of the above claim(s) 1-8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-12 and 14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/25/07 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 9-11 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abecassis (5,291,395) in view of Westbury et al. (6,873,963).

4. With respect to Claim 9: Abecassis discloses the use of a method for storing samples comprising the steps:

- a. Providing identification numbers to each sample (Column 2, lines 47-53 and Column 3, lines 44-47);
- b. Storing the sample in environmental conditions necessary to keep said sample viable (Column 9, lines 11-19, viable is defined as something that is capable of working, functioning or developing adequately, the vendcode expires, therefore the sample cannot

be handed out, and they are stored in conditions, until the vendecode expires, therefore stored in environmental conditions to keep sample viable, when the vendecode expires it considered not to be functioning adequately, therefore the examiner considers this to mean after the vendcode expires, then the item it is vending to no longer be viable);

c. Storing information about samples in a database (column 3, lines 52-57); and

d. Sending samples to customer (column 9, lines 11-19) along with information about samples (As stated above, in Column 3, lines 37-53, Abecassis discloses the samples have information such as identification and color information printed on the carrier which contains the samples, therefore the examiner considers this to mean information about the samples is sent along with the samples).

5. Abecassis discloses that the samples can be mailed from a warehouse, however fails to disclose tracking delivery of the samples from a facility where it is stored to a final destination. Westbury discloses the use of a shipment tracking analysis and reporting system, that tracks a shipment to its final destination (Column 2, lines 43-53). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Abecassis to include the tracking function of Westbury, in order to provide estimated arrival times for shipments and to evaluate performance of suppliers and carriers (See Westbury, column 2).

6. Abecassis disclose the database storing information for each sample, and whenever a user receives the same (the examiner considers this to be tracking of the samples that are stored, Column 3, lines 29-37), Abecassis also discloses the use of a warehousing system with stores the samples (Column 9, lines 11-19). However, Abecassis does not explicitly disclose informing a company when samples need to be replenished in the facility. While Abecassis does not disclose

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informing a company when samples need to be replenished in the facility, Official notice is taken that informing a supplier of low inventory in order to the inventory to be replenished is old and well known. When a store or a retailer is out of stock of an item, the retailer must contact the supplier to order more items, therefore notifying the supplier to replenish the inventory.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to inform a company when the samples need to be replenished. One would have been motivated to inform a company when inventory levels are low, so that the inventory does not run out and become out of stock.

7. With respect to Claim 10: Westbury discloses estimating the estimated times of arrival of shipments (See abstract).

8. With respect to Claim 11: Westbury discloses the tracking system tracks shipments and notifies each party in the shipping transaction of tracking data, such as estimated time of arrival, (Column 3, lines 37-48).

9. With respect to Claim 14: Abecassis discloses a brochure is sent to the customer, which the examiner considers to be collateral material (column 3, lines 53-66 in further support see Column 8, lines 54-67).

10. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Abecassis (5,291,395) and Westbury et al. (6,873,963) in further view of Maggard et al. (6,021,362).

11. With respect to Claim 12: Abecassis discloses storing information about the samples in a database, but does not specifically disclose that information containing when the sample is no longer viable. Maggard discloses the use of the items containing expiration dates of the samples,

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i.e. how long they are viable, (Column 11, lines 49-53). It would have been obvious to one having ordinary skill in the art at the time the invention was made, to modify Abecassis to include expiration dates of the samples, as disclosed by Maggard, so that expired or outdated samples are not being dispensed or given to consumers (See Maggard, Columns 11 and 12).

Response to Arguments

12. Applicant's arguments filed 7/25/07 have been fully considered but they are not persuasive.


13. The applicant has made a comment that the examiner has previously stated that neither the prior art referenced teach this viability, however the examiner in the last office action has stated that the examiner considers Maggard to disclose sample viability and storing the samples, therefore the examiner is unclear when it was stated that the prior art referenced does not teach this type of viability. As explained above the term viable is defined as something that is capable of working, functioning or developing adequately, the vendcode expires, therefore the sample cannot be handed out, therefore considered not to be functioning adequately, therefore the examiner considers this to mean after the vendcode expires, then the item it is vending to no longer be viable. As stated in the final rejection, the word viable does not indicate that the sample has to be a "living" sample. The applicant is attempting to claim the invention more broadly than what is being argued. The applicant has appearing to base all the arguments on the sample being a "living" sample, therefore the examiner suggests clarifying or defining the sample as a living sample, in order to overcome the prior art of record.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamisue A. Plucinski whose telephone number is (571) 272-6811. The examiner can normally be reached on M-Th (5:30 - 4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Jamisue Plucinski
Patent Examiner
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